

Paul Kampmeier, WSBA #31560  
Emma Bruden, WSBA #56280  
(located in Oregon)

The Honorable Rosanna Malouf Peterson

Kampmeier & Knutsen PLLC  
811 First Avenue, Suite 468  
Seattle, Washington 98104  
Telephone: (206) 858-6983 (Kampmeier)  
(503) 719-5641 (Bruden)  
Email: paul@kampmeierknutsen.com  
emma@kampmeierknutsen.com

*Attorneys for Plaintiffs*

Marla S. Fox, WSBA #45611  
WildEarth Guardians  
P.O. Box 13086  
Portland, Oregon 97213  
Telephone: (503) 434-7737  
Email: mfox@wildearthguardians.org

*Attorney for Plaintiff WildEarth Guardians*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CONSERVATION NORTHWEST and )  
WILDEARTH GUARDIANS, )

No. 2:20-cv-00450-RMP

Plaintiffs, )

v. )

**[PROPOSED] STIPULATED  
ORDER OF DISMISSAL**

U.S. FOREST SERVICE and RODNEY )  
SMOLDON, Forest Supervisor, Colville )  
National Forest, )

Defendants. )

**[PROPOSED] STIPULATED  
ORDER OF DISMISSAL – 1**

Kampmeier & Knutsen PLLC  
811 First Avenue, Suite 468  
Seattle, Washington 98104  
(206) 858-6983

1 Plaintiffs Conservation Northwest and WildEarth Guardians (“Plaintiffs”)  
2 and Defendants the United States Forest Service and Rodney Smoldon, Forest Su-  
3 pervisor of the Colville National Forest (“Defendants”) (collectively “the Parties”)  
4 stipulate and state as follows:  
5

6 WHEREAS, in September of 2019, Defendant Rodney Smoldon signed a  
7 document entitled “Rational and Justification for MVUM changes 2019” that  
8 stated the U.S. Forest Service was modifying the designated classes of vehicles al-  
9 lowed on specific roads within the Colville National Forest (“Action”);  
10  
11

12 WHEREAS, the Action changed the vehicle use class designations for 26  
13 road segments from open to highway legal vehicles only to open to all vehicles,  
14 which opened those roads to use by all terrain vehicles;  
15

16 WHEREAS, on April 1, 2020, the U.S. Forest Service published new motor  
17 vehicle use maps that adopted the vehicle use class designation changes announced  
18 in the Action (“Maps”);  
19  
20

21 WHEREAS, on September 14, 2020, Plaintiffs provided Defendants with  
22 60-days’ notice of Plaintiffs’ intent to sue Defendants under the Endangered Spe-  
23 cies Act (“ESA”), alleging, among other things, that Defendants had violated the  
24 ESA by failing to initiate or complete consultation under ESA section 7(a)(2) be-  
25 fore issuing the Action and the Maps;  
26  
27

28 WHEREAS, on December 7, 2020, Plaintiffs filed their Complaint against  
29

1 Defendants alleging violations of the ESA, the National Environmental Policy Act,  
2 the Travel Management Rule, and the Administrative Procedure Act;

3 WHEREAS, in their complaint Plaintiffs asked the Court to set aside and va-  
4 cate the Action and the Maps, to reinstate the former motorized use designations  
5 and use maps, and to award Plaintiffs litigation expenses including costs and rea-  
6 sonable attorneys' fees;  
7

8 WHEREAS, on April 30, 2021, Defendants decided to withdraw the Action  
9 and the Maps and to reinstate the former motorized use designations and use maps;  
10 and  
11

12 WHEREAS, in light of Defendants' decision to withdraw the decision chal-  
13 lenged in this lawsuit, Plaintiffs and Defendants, through their authorized repre-  
14 sentatives, have agreed to dismiss the case on the terms set forth below and to al-  
15 low Plaintiffs to apply for an award of attorneys' fees and costs under the ESA.  
16

17 NOW THEREFORE, Plaintiffs and Defendants agree and stipulate as fol-  
18 lows:  
19

20 1. In light of Defendants' withdrawal of the challenged Action and Maps  
21 and the reinstatement of the former motorized use designations and use maps, upon  
22 entry of these stipulations as an order of the Court this case is dismissed with prej-  
23 udice;  
24

25 2. Nothing in this Stipulated Order of Dismissal shall preclude Plaintiffs  
26  
27  
28  
29

1 from challenging, in a separate lawsuit, any of Defendants' future decisions, maps,  
2 or compliance with applicable laws;

3         3.       Plaintiffs are entitled to an award of attorneys' fees and costs under  
4 the ESA because an award is "appropriate" because Plaintiffs achieved some de-  
5 gree of success on the merits. 16 U.S.C. § 1540(g)(4). Plaintiffs' lawsuit catalyzed  
6 Defendants' voluntary compliance with the law and there are no special circum-  
7 stances that make an award of costs and fees unjust;  
8

9         4.       Plaintiffs have the right to seek recovery of attorneys' fees and costs  
10 under the ESA incurred in connection with this action and Defendants have the  
11 right to contest the reasonableness of Plaintiffs' attorneys' time and hourly rates  
12 and to request that time billed on non-ESA-related claims be excluded. The dead-  
13 line set forth in Federal Rule of Civil Procedure 54(d) is extended from fourteen  
14 (14) days to sixty (60) days. Plaintiffs may file a petition for litigation expenses, at-  
15 torneys' fees, and costs under the ESA up to sixty (60) days after entry of this Stip-  
16 ulated Order of Dismissal as an Order of the Court;  
17

18         5.       The Parties agree that Plaintiffs will not separately apply for an award  
19 of attorneys' fees and costs under the Equal Access to Justice Act or any other stat-  
20 ute; and  
21

22         6.       These stipulations become effective upon entry as an Order of the  
23 Court.  
24  
25  
26  
27  
28  
29

1 IT IS SO STIPULATED this 4<sup>th</sup> day of June 2021.

2 **For Plaintiffs WildEarth Guardians and Conservation Northwest:**

3  
4 KAMPMEIER & KNUTSEN PLLC

5 By: s/ Paul A. Kampmeier

6 Paul A. Kampmeier, WSBA #31560

7 Kampmeier & Knutsen PLLC

8 811 First Avenue, Suite 468

9 Seattle, Washington 98104

10 Telephone: (206) 858-6983

Email: paul@kampmeierknutsen.com

11 *Attorneys for Plaintiffs*

12  
13 **For Plaintiff WildEarth Guardians:**

14 WILDEARTH GUARDIANS

15 By: s/ Marla S. Fox

16 Marla S. Fox, WSBA #45611

17 P.O. Box 13086

18 Portland, Oregon 97213

19 Telephone: (651) 434-7737

20 Email: mfox@wildearthguardians.org

21 *Attorney for Plaintiff WildEarth Guardians*

22 **For Defendants the U.S. Forest Service and Rodney Smoldon:**

23  
24 William D. Hyslop

25 United States Attorney, E.D. Washington

26 By: s/ John T. Drake

27 John T. Drake, AUSA

28 Derek T. Taylor, AUSA

29 *Attorneys for Defendants*

**[PROPOSED] STIPULATED  
ORDER OF DISMISSAL – 5**

Kampmeier & Knutsen PLLC  
811 First Avenue, Suite 468  
Seattle, Washington 98104  
(206) 858-6983

IT IS SO ORDERED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

The Honorable Rosanna Malouf Peterson  
United States District Judge